



***Substitute Senate Bill No. 547***

***Public Act No. 06-68***

***AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT AND THE CONNECTICUT REVISED NONSTOCK CORPORATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 33-602 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

As used in sections 33-600 to 33-998, inclusive, and sections 2 and 15 of this act:

(1) "Address" means location as described by the full street number, if any, street, city or town, state or country and not a mailing address such as a post office box.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Certificate of incorporation" means the original certificate of incorporation or restated certificate of incorporation, and all amendments thereto, and all certificates of merger or consolidation. In the case of a specially chartered corporation, "certificate of incorporation" means the special charter of the corporation, including any portions of the charters of its predecessor companies which have

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continuing effect, and any amendments to the charter made by special act or pursuant to general law. In the case of a corporation formed before January 1, 1961, or of a specially chartered corporation, "certificate of incorporation" includes those portions of any other corporate instruments or resolutions of current application in which are set out provisions of the sort which either (A) are required by sections 33-600 to 33-998, inclusive, to be embodied in the certificate of incorporation, or (B) are expressly permitted by sections 33-600 to 33-998, inclusive, to be operative only if included in the certificate of incorporation. It also includes what were, prior to January 1, 1961, designated at law as agreements of association, articles of incorporation, charters and other such terms.

(4) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(5) "Corporation" or "domestic corporation" means a corporation with capital stock, which is not a foreign corporation, incorporated under the laws of this state, whether general law or special act and whether before or after January 1, 1997.

(6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice including delivery by hand, mail, commercial delivery and electronic transmission.

(7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; a distribution of indebtedness; or otherwise.

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(8) "Document" includes anything delivered to the office of the Secretary of the State for filing under sections 33-600 to 33-998, inclusive.

(9) "Effective date of notice" is defined in section 33-603.

(10) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(11) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(12) "Entity" includes a corporation and foreign corporation; nonprofit corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, limited liability company, trust and two or more persons having a joint or common economic interest; and state, United States or foreign government.

(13) "Facts objectively ascertainable" outside of a plan or filed document is defined in subsection (l) of section 33-608.

(14) "Foreign corporation" means a corporation incorporated under a law other than the law of this state.

(15) "Governmental subdivision" includes authority, county, district and municipality.

(16) "Includes" denotes a partial definition.

(17) "Individual" includes the estate of an incompetent or deceased individual.

(18) "Means" denotes an exhaustive definition.

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(19) "Notice" is defined in section 33-603.

(20) "Person" includes individual and entity.

(21) "Principal office" of a domestic corporation means the address of the principal office of such corporation in this state, if any, as the same appears in the last annual report, if any, filed by such corporation with the Secretary of the State. If no principal office so appears, the corporation's "principal office" means the address in this state of the corporation's registered agent for service as last shown on the records of the Secretary of the State. In the case of a domestic corporation which has not filed such an annual report or appointment of registered agent for service, the "principal office" means the address of the principal place of business of such corporation in this state, if any, and if such corporation has no place of business in this state, its "principal office" shall be the office of the Secretary of the State.

(22) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(23) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(24) "Qualified director" is defined in section 2 of this act.

[(23)] (25) "Record date" means the date established under sections 33-665 to 33-687, inclusive, or sections 33-695 to 33-727, inclusive, on which a corporation determines the identity of its shareholders and their shareholdings for purposes of sections 33-600 to 33-998, inclusive. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

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[(24)] (26) "Secretary" means the corporate officer to whom under the bylaws or by the board of directors is delegated responsibility under subsection (c) of section 33-763 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

[(25)] (27) "Secretary of the State" means the Secretary of the State of Connecticut.

[(26)] (28) "Shares" means the units into which the proprietary interests in a corporation are divided.

[(27)] (29) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

[(28)] (30) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

[(29)] (31) "State", when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

[(30)] (32) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

[(31)] (33) "United States" includes any district, authority, bureau, commission, department and other agency of the United States.

[(32)] (34) "Voting group" means all shares of one or more classes or series that under the certificate of incorporation or sections 33-600 to 33-998, inclusive, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares

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entitled by the certificate of incorporation or said sections to vote generally on the matter are for that purpose a single voting group.

[(33)] (35) "Voting power" means the current power to vote in the election of directors.

Sec. 2. (NEW) (*Effective October 1, 2006*) (a) For purposes of sections 33-600 to 33-998, inclusive, of the general statutes and section 15 of this act, a qualified director is a director who, at the time action is to be taken under:

(1) Section 33-724 of the general statutes, as amended by this act, does not have (A) a material interest in the outcome of the proceeding, or (B) a material relationship with a person who has such an interest;

(2) Section 33-773 or 33-775 of the general statutes, as amended by this act, (A) is not a party to the proceeding, (B) is not a director who sought approval for a director's conflicting interest transaction under section 33-783 of the general statutes, as amended by this act, or a disclaimer of the corporation's interest in a business opportunity under section 15 of this act, which approval or disclaimer is challenged in the proceeding, and (C) does not have a material relationship with a director described in either subparagraph (A) or (B) of this subdivision;

(3) Section 33-783 of the general statutes, as amended by this act, is not a director (A) as to whom the transaction is a director's conflicting interest transaction, or (B) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(4) Section 15 of this act, would be a qualified director under subdivision (3) of this subsection if the business opportunity were a director's conflicting interest transaction.

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(b) For purposes of this section:

(1) "Material relationship" means a familial, financial, professional or employment relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(2) "Material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(c) The presence of one or more of the following circumstances shall not by itself prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is also a director; or

(3) With respect to action to be taken under section 33-724 of the general statutes, as amended by this act, status as a named defendant, as a director against whom action is demanded or as a director who approved the conduct being challenged.

Sec. 3. Subsection (d) of section 33-717 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

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(d) An agreement authorized by this section shall cease to be effective when [shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association] the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's certificate of incorporation or bylaws, adopt an amendment to the certificate of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

Sec. 4. Section 33-724 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (b) or [(f)] (e) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection [(f)] (e) of this section, the determination in subsection (a) of this section shall be made by:

(1) A majority vote of [independent] qualified directors present at a meeting of the board of directors if the [independent] qualified directors constitute a quorum; or

(2) [a] A majority vote of a committee consisting of two or more [independent] qualified directors appointed by [a] majority vote of [independent] qualified directors present at a meeting of the board of directors, regardless of whether [or not] such [independent] qualified directors [constituted] constitute a quorum.



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[(c) None of the following shall by itself cause a director to be considered not independent for purposes of this section: (1) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded; (2) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or (3) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.]

[(d)] (c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (1) that a majority of the board of directors did not consist of [independent] qualified directors at the time the determination was made, or (2) that the requirements of subsection (a) of this section have not been met.

[(e)] (d) If a majority of the board of directors [does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is] consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met. If a majority of the board of directors did not consist of qualified directors at the time the determination was made, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met.

[(f) The] (e) Upon motion by the corporation, the court may appoint a panel of one or more [independent persons upon motion by the corporation] individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the

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corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

Sec. 5. Section 33-764 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

Each officer has the authority and shall perform the [duties] functions set forth in the bylaws or, to the extent consistent with the bylaws, the [duties] functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the [duties] functions of other officers.

Sec. 6. Section 33-770 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

As used in sections 33-770 to 33-779, inclusive:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if [his] the individual's duties to the corporation also impose duties on, or otherwise involve services by, [him] the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

[(3) "Disinterested director" means a director who at the time of a

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vote referred to in subsection (c) of section 33-773 or a vote or selection referred to in subsection (b) or (c) of section 33-775, is not (A) a party to the proceeding or (B) an individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.]

[(4)] (3) "Expenses" include counsel fees.

[(5)] (4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

[(6)] (5) "Official capacity" means: (A) When used with respect to a director, the office of director in a corporation; and (B) when used with respect to an [individual other than a director] officer, as contemplated in section 33-776, the office in a corporation held by the officer. [or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.] "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

[(7)] (6) "Party" means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

[(8)] (7) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative and whether formal or informal.

Sec. 7. Section 33-773 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

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(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred [by a director] in connection with the proceeding by an individual who is a party to [a] the proceeding because [he is a director if he] that individual is a member of the board of directors if the director delivers to the corporation:

(1) A written affirmation of [his] the director's good faith belief that [he has met] the relevant standard of conduct described in section 33-771 [.] has been met by the director or that the proceeding involves conduct for which liability has been limited under a provision of the certificate of incorporation as authorized by subdivision (4) of subsection (b) of section 33-636, as amended by this act; and

(2) [his] A written undertaking to repay any funds advanced if [he] the director is not entitled to mandatory indemnification under section 33-772 and it is ultimately determined under section 33-774 or 33-775, as amended by this act, that [he] the director has not met the relevant standard of conduct described in section 33-771.

(b) The undertaking required by subdivision (2) of subsection (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors: (A) If there are two or more [disinterested] qualified directors, by a majority vote of all the [disinterested] qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more [disinterested] qualified directors appointed by such a vote; or (B) if there are fewer than two [disinterested] qualified directors, by the vote necessary for action by the board in

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accordance with subsection (c) of section 33-752, in which authorization directors who [do not qualify as disinterested] are not qualified directors may participate; or

(2) [by] By the shareholders, [provided] but shares owned by or voted under the control of a director who at the time [does not qualify as a disinterested] is not a qualified director may not be voted on the authorization.

Sec. 8. Section 33-775 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) A corporation may not indemnify a director under section 33-771 unless authorized for a specific proceeding after a determination has been made that indemnification [of the director] is permissible because [he] the director has met the relevant standard of conduct set forth in said section.

(b) The determination shall be made:

(1) If there are two or more [disinterested] qualified directors, by the board of directors by a majority vote of all the [disinterested] qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more [disinterested] qualified directors appointed by such a vote;

(2) By special legal counsel (A) selected in the manner prescribed in subdivision (1) of this subsection, or (B) if there are fewer than two [disinterested] qualified directors, selected by the board of directors, in which selection directors who [do not qualify as disinterested] are not qualified directors may participate; or

(3) By the shareholders, but shares owned by or voted under the control of a director who at the time [does not qualify as a disinterested] is not a qualified director may not be voted on the

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determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two [disinterested] qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subparagraph (B) of subdivision (2) of subsection (b) of this section. [to select special legal counsel.]

Sec. 9. Section 33-781 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

As used in sections 33-781 to 33-784, inclusive, as amended by this act:

[(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(A) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction; or

(B) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following

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persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent or employee; (ii) a person that controls one or more of the entities specified in subparagraph (B)(i) of this subdivision or an entity that is controlled by, or is under common control with, one or more of the entities specified in subparagraph (B)(i) of this subdivision; or (iii) an individual who is a general partner, principal or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of a director means (A) the spouse of the director, or a parent or sibling thereof, or a child, grandchild, sibling or parent of the director, or the spouse of any thereof, or an individual having the same home as the director, or a trust or estate of which an individual specified in this subparagraph is a substantial beneficiary, or (B) a trust, estate, incompetent, conservatee or minor of which the director is a fiduciary.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (A) the existence and nature of his conflicting interest, and (B) all facts known to him respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

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(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability or other damage.]

(1) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, (A) to which, at the relevant time, the director is a party, (B) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director, or (C) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) "Control", including the term "controlled by", means (A) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (B) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) "Relevant time" means (A) the time at which directors' action respecting the transaction is taken in compliance with section 33-783, as amended by this act, or (B) if the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 33-783, as amended by this act, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity



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of the director when participating in action on the authorization of the transaction.

(5) "Related person" means: (A) The director's spouse, or a parent or sibling thereof; (B) a child, grandchild, parent or sibling of the director, or the spouse of any thereof; (C) an individual (i) living in the same home as the director, or (ii) a trust or estate of which a person specified in subparagraph (A) or (B) of this subdivision or clause (i) of this subparagraph is a substantial beneficiary; (D) an entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified in subparagraphs (A) to (C), inclusive, of this subdivision; (E) a domestic or foreign (i) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director, (ii) unincorporated entity of which the director is a general partner or a member of the governing body, or (iii) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or (F) a person that is, or an entity that is controlled by, an employer of the director.

(6) "Fair to the corporation" means, for purposes of subdivision (3) of subsection (b) of section 33-782, as amended by this act, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (A) fair in terms of the director's dealings with the corporation, and (B) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(7) "Required disclosure" means disclosure of (A) the existence and nature of the director's conflicting interest, and (B) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

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Sec. 10. Section 33-782 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) A transaction effected or proposed to be effected by [a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which he has a personal, economic or other association, has an interest in the transaction] the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be [enjoined, set aside] the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, [because the director, or any person with whom or which he has a personal, economic or other association,] on the ground that the director has an interest [in] respecting the transaction, if: (1) Directors' action respecting the transaction was [at any time] taken in compliance with section 33-783, as amended by this act, at any time; (2) shareholders' action respecting the transaction was [at any time] taken in compliance with section 33-784, as amended by this act, at any time; or (3) the transaction, judged according to the circumstances at the relevant time, [of commitment,] is established to have been fair to the corporation.

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Sec. 11. Section 33-783 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (1) of subsection (b) of section 33-782, as amended by this act, if the transaction [received] has been authorized by the affirmative vote of a majority, but no fewer than two, of [those qualified directors on the board of directors or on a duly empowered committee of the board] the qualified directors who voted on the transaction, after [either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (b) of this section; provided that action by a committee is so effective only if (1) all its members are qualified directors, and (2) its members are either all the qualified directors on the board or are] required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b) of this section, provided that where the action has been taken by a committee, all members of the committee were qualified directors, and either (1) the committee was composed of all the qualified directors on the board of directors, or (2) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

[(b) If a director has a conflicting interest respecting a transaction, but neither he nor a related person of the director specified in subparagraph (A) of subdivision (3) of section 33-781 is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in subparagraph (B) of subdivision (4) of section 33-781, then disclosure is sufficient for purposes of subsection (a) of this section if the director (1) discloses to the directors voting on the transaction the existence and nature of his conflicting

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interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (2) plays no part, directly or indirectly, in their deliberations or vote.]

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subparagraph (E) or (F) of subdivision (5) of section 33-781, as amended by this act, is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction: (1) All information required to be disclosed that is not so violative, (2) the existence and nature of the director's conflicting interest, and (3) the nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

[(d) For purposes of this section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (1) a conflicting interest respecting the transaction, or (2) a familial, financial, professional or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.]

(d) Where directors' action under this section does not satisfy a

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quorum or voting requirement applicable to the authorization of the transaction by reason of the certificate of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

Sec. 12. Section 33-784 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (2) of subsection (b) of section 33-782, as amended by this act, if a majority of the votes [entitled to be] cast by the holders of all qualified shares [were cast] are in favor of the transaction after (1) notice to shareholders describing the [director's conflicting interest] action to be taken respecting the transaction, (2) provision to the corporation of the information referred to in subsection [(d)] (b) of this section, and (3) [required disclosure] communication to the shareholders [who voted] entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information [was] is not known by them.

[(b) For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(c) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (d) and (e) of this section, shareholders' action that otherwise complies

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with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.]

[(d)] (b) [For purposes of compliance with subsection (a) of this section, a] A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number [, and the identity of persons holding or controlling the vote, of all] of shares that the director knows are [beneficially owned, or the voting of which is controlled, by the director or by a related person of the director, or both] not qualified shares under subsection (c) of this section, and the identity of the holders of those shares.

(c) For purposes of this section: (1) "Holder" means, and "held by" refers to shares held by, both a record shareholder, as defined in subdivision (7) of section 33-855, and a beneficial shareholder, as defined in subdivision (2) of section 33-855; and (2) "qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) of this section is notified, are held by (A) a director who has a conflicting interest respecting the transaction, or (B) a related person of the director, excluding a person described in subparagraph (F) of subdivision (5) of section 33-781, as amended by this act.

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of

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this section solely because of a director's failure [of a director] to comply with subsection [(d)] (b) of this section, and if the director establishes that [his] the failure [did not determine and] was not intended [by him] to influence and did not in fact determine the outcome of the vote, the court may [, with or without further proceedings respecting subdivision (3) of subsection (b) of section 33-782,] take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as [it] the court considers appropriate in the circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the certificate of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

Sec. 13. Subsection (d) of section 33-897 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(d) Within ten days of the commencement of a proceeding under subdivision (1) of subsection (a) [or subdivision (2) of subsection (b)] of section 33-896 to dissolve a corporation that [has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange] is not a public corporation, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 33-900, as amended by this act, and accompanied by a copy of said section.

Sec. 14. Subsection (a) of section 33-900 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective*

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*October 1, 2006*):

(a) In a proceeding [by a shareholder] under subdivision (1) of subsection (a) [or subdivision (2) of subsection (b)] of section 33-896 to dissolve a corporation that [has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association] is not a public corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

Sec. 15. (NEW) (*Effective October 1, 2006*) (a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and: (1) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 33-783 of the general statutes, as amended by this act, as if the decision being made concerned a director's conflicting interest transaction; or (2) shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 33-784 of the general statutes, as amended by this act, as if the decision being made concerned a director's conflicting interest transaction; except that, rather than making required disclosure, as defined in section 33-781 of the general statutes, as amended by this act, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the



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business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

Sec. 16. Section 33-1002 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

As used in sections 33-1000 to 33-1290, inclusive, and sections 17 and 26 of this act:

(1) "Address" means location as described by the full street number, if any, street, city or town, state or country and not a mailing address such as a post office box.

(2) "Board" or "board of directors" means the group of persons vested with management of the affairs of the corporation irrespective of the name by which such group is designated.

(3) "Business corporation" means a corporation with capital stock or shares, incorporated under the laws of this state, whether general law or special act and whether before or after January 1, 1997.

(4) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(5) "Certificate of incorporation" means the original certificate of incorporation or restated certificate of incorporation, all amendments

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thereto, and all certificates of merger or consolidation. In the case of a specially chartered corporation, the "certificate of incorporation" means the special charter of the corporation, including any portions of the charters of its predecessor companies which have continuing effect, and any amendments to the charter made by special act or pursuant to general law. In the case of a corporation formed before January 1, 1961, or of a specially chartered corporation, the "certificate of incorporation" includes those portions of any other corporate instruments or resolutions of current application in which are set out provisions of a sort which either (A) are required by sections 33-1000 to 33-1290, inclusive, to be embodied in the certificate of incorporation, or (B) are expressly permitted by said sections to be operative only if included in the certificate of incorporation. It also includes what were, prior to January 1, 1961, designated at law as agreements of association, articles of incorporation, charters and other such terms.

(6) "Class" means all members that under the certificate of incorporation or sections 33-1000 to 33-1290, inclusive, are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the certificate of incorporation or said sections to vote generally on the matter are for that purpose a single class.

(7) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(8) "Corporation" or "domestic corporation" means a corporation without capital stock or shares, which is not a foreign corporation, incorporated under the laws of this state, whether general law or special act and whether before or after January 1, 1997, but shall not include towns, cities, boroughs or any municipal corporation or department thereof.

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(9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice including delivery by hand, mail, commercial delivery and electronic transmission.

(10) "Distribution" means a direct or indirect transfer of money or other property, or inurrence of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests, or to or for the benefit of its officers or directors, provided the payment of reasonable compensation for services rendered, the reimbursement of reasonable expenses, the granting of benefits to members in conformity with the corporation's nonprofit purposes and the making of distributions upon dissolution or final liquidation as provided by sections 33-1000 to 33-1290, inclusive, shall not be deemed a distribution.

(11) "Document" includes anything delivered to the office of the Secretary of the State for filing under sections 33-1000 to 33-1290, inclusive.

(12) "Effective date of notice" is defined in section 33-1003.

(13) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(14) "Entity" includes a corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, limited liability company, trust and two or more persons having a joint or common economic interest; and state, United States, or foreign government.

(15) "Foreign corporation" means any nonprofit corporation with or without capital stock which is not organized under the laws of this

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state.

(16) "Governmental subdivision" includes authority, county, district and municipality.

(17) "Includes" denotes a partial definition.

(18) "Individual" includes the estate of an incompetent or deceased individual.

(19) "Means" denotes an exhaustive definition.

(20) "Member" means a person having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or bylaws.

(21) A corporation is "nonprofit" if no distribution may be made to its members, directors or officers.

(22) "Notice" is defined in section 33-1003.

(23) "Person" includes individual and entity.

(24) "Principal office" of a domestic corporation means the address of the principal office of such corporation in this state, if any, as the same appears in the last annual report, if any, filed by such corporation with the Secretary of the State. If no principal office so appears, the corporation's "principal office" means the address in this state of the corporation's registered agent for service as last shown on the records of the Secretary of the State. In the case of a domestic corporation which has not filed such an annual report or appointment of registered agent for service, the "principal office" means the address of the principal place of affairs of such corporation in this state, if any, and if such corporation has no place of affairs in this state, its "principal office" shall be the office of the Secretary of the State.

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(25) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(26) "Qualified director" is defined in section 17 of this act.

[(26)] (27) "Record date" means the date established under sections 33-1055 to 33-1077, inclusive, on which a corporation determines the identity of its members and their interests for purposes of sections 33-1000 to 33-1290, inclusive. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

[(27)] (28) "Secretary" means the corporate officer to whom under the bylaws or by the board of directors is delegated responsibility under subsection (c) of section 33-1109 for custody of the minutes of the meetings of the board of directors and of the members and for authenticating records of the corporation.

[(28)] (29) "Secretary of the State" means the Secretary of the State of Connecticut.

[(29)] (30) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

[(30)] (31) "State", when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

[(31)] (32) "United States" includes any district, authority, bureau, commission, department and other agency of the United States.

Sec. 17. (NEW) (*Effective October 1, 2006*) (a) For purposes of sections 33-1000 to 33-1290, inclusive, of the general statutes and section 26 of this act, a qualified director is a director who, at the time action is to be

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taken under:

(1) Section 33-1119 or 33-1121 of the general statutes, as amended by this act, (A) is not a party to the proceeding, (B) is not a director who sought approval for a director's conflicting interest transaction under section 33-1129 of the general statutes, as amended by this act, or a disclaimer of the corporation's interest in a business opportunity under section 26 of this act, which approval or disclaimer is challenged in the proceeding, and (C) does not have a material relationship with a director described in either subparagraph (A) or (B) of this subdivision;

(2) Section 33-1129 of the general statutes, as amended by this act, is not a director (A) as to whom the transaction is a director's conflicting interest transaction, or (B) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(3) Section 26 of this act, would be a qualified director under subdivision (2) of this subsection if the business opportunity were a director's conflicting interest transaction.

(b) For purposes of this section:

(1) "Material relationship" means a familial, financial, professional or employment relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(2) "Material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the members or directors generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

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(c) The presence of one or more of the following circumstances shall not by itself prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others; or

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is also a director.

Sec. 18. Section 33-1110 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

Each officer has the authority and shall perform the [duties] functions set forth in the bylaws, or to the extent consistent with the bylaws, the [duties] functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the [duties] functions of other officers.

Sec. 19. Section 33-1116 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

As used in sections 33-1116 to 33-1125, inclusive:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint

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venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if [his] the individual's duties to the corporation also impose duties on, or otherwise involve services by, [him] the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

[(3)] (3) "Disinterested director" means a director who at the time of a vote referred to in subsection (c) of section 33-1119 or a vote or selection referred to in subsection (b) or (c) of section 33-1121, is not (A) a party to the proceeding or (B) an individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.]

[(4)] (3) "Expenses" include counsel fees.

[(5)] (4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

[(6)] (5) "Official capacity" means: (A) When used with respect to a director, the office of director in a corporation; and (B) when used with respect to an [individual other than a director] officer, as contemplated in section 33-1122, the office in a corporation held by the officer. [or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.] "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.



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[(7)] (6) "Party" means an individual who was, is or is threatened to be made a defendant or respondent in a proceeding.

[(8)] (7) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative and whether formal or informal.

Sec. 20. Section 33-1119 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred [by a director] in connection with the proceeding by an individual who is a party to [a] the proceeding because [he is a director if he] that individual is a member of the board of directors if the director delivers to the corporation:

(1) A written affirmation of [his] the director's good faith belief that [he has met] the relevant standard of conduct described in section 33-1117 [.] has been met by the director or that the proceeding involves conduct for which liability has been limited under a provision of the certificate of incorporation as authorized by subdivision (4) of subsection (b) of section 33-1026, as amended by this act; and

(2) [his] A written undertaking to repay any funds advanced if [he] the director is not entitled to mandatory indemnification under section 33-1118 and it is ultimately determined under section 33-1120 or 33-1121, as amended by this act, that [he] the director has not met the relevant standard of conduct described in section 33-1117.

(b) The undertaking required by subdivision (2) of subsection (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

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(c) Authorizations under this section shall be made:

(1) By the board of directors: (A) If there are two or more [disinterested] qualified directors, by a majority vote of all the [disinterested] qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more [disinterested] qualified directors appointed by such a vote; or (B) if there are fewer than two [disinterested] qualified directors, by the vote necessary for action by the board in accordance with subsection (c) of section 33-1100, in which authorization directors who [do not qualify as disinterested] are not qualified directors may participate; or

(2) [by] By the members, but a member who is also a director who at the time [does not qualify as a disinterested] is not a qualified director may not vote on the authorization.

Sec. 21. Section 33-1121 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) A corporation may not indemnify a director under section 33-1117 unless authorized for a specific proceeding after a determination has been made that indemnification [of the director] is permissible because [he] the director has met the relevant standard of conduct set forth in said section.

(b) The determination shall be made:

(1) If there are two or more [disinterested] qualified directors, by the board of directors by a majority vote of all the [disinterested] qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more [disinterested] qualified directors appointed by such a vote;

(2) By special legal counsel (A) selected in the manner prescribed in

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subdivision (1) of this subsection, or (B) if there are fewer than two [disinterested] qualified directors, selected by the board of directors, in which selection directors who [do not qualify as disinterested] are not qualified directors may participate; or

(3) By the members entitled to vote to elect directors, but any such member who is also a director who at the time [does not qualify as a disinterested] is not a qualified director may not vote on the determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two [disinterested] qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subparagraph (B) of subdivision (2) of subsection (b) of this section. [to select special legal counsel.]

Sec. 22. Section 33-1127 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

As used in sections 33-1127 to 33-1130, inclusive, as amended by this act:

[(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(A) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a

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related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction; or

(B) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent or employee; (ii) a person that controls one or more of the entities specified in subparagraph (B)(i) of this subdivision or an entity that is controlled by, or is under common control with, one or more of the entities specified in subparagraph (B)(i) of this subdivision; or (iii) an individual who is a general partner, principal or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of a director means (A) the spouse of the director, or a parent or sibling thereof, or a child, grandchild, sibling or parent of the director, or the spouse of any thereof, or an individual having the same home as the director, or a trust or estate of which an individual specified in this subparagraph is a substantial beneficiary, or (B) a trust, estate, incompetent, conservatee or minor of which the director is a fiduciary.

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(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (A) the existence and nature of his conflicting interest, and (B) all facts known to him respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability or other damage.]

(1) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, (A) to which, at the relevant time, the director is a party, (B) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director, or (C) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) "Control", including the term "controlled by", means (A) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through membership or the ownership of voting shares or interests, by contract, or otherwise, or (B) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) "Relevant time" means (A) the time at which directors' action respecting the transaction is taken in compliance with section 33-1129, as amended by this act, or (B) if the transaction is not brought before

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the board of directors of the corporation, or its committee, for action under section 33-1129, as amended by this act, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director when participating in action on the authorization of the transaction.

(5) "Related person" means: (A) The director's spouse, or a parent or sibling thereof; (B) a child, grandchild, parent or sibling of the director, or the spouse of any thereof; (C) an individual (i) living in the same home as the director, or (ii) a trust or estate of which a person specified in subparagraph (A) or (B) of this subdivision or clause (i) of this subparagraph is a substantial beneficiary; (D) an entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified in subparagraphs (A) to (C), inclusive, of this subdivision; (E) a domestic or foreign (i) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director, (ii) unincorporated entity of which the director is a general partner or a member of the governing body, or (iii) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or (F) a person that is, or an entity that is controlled by, an employer of the director.

(6) "Fair to the corporation" means, for purposes of subdivision (3) of subsection (b) of section 33-1128, as amended by this act, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (A) fair in terms of the director's dealings with the corporation, and (B) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

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(7) "Required disclosure" means disclosure of (A) the existence and nature of the director's conflicting interest, and (B) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Sec. 23. Section 33-1128 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) A transaction effected or proposed to be effected by [a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside or give rise to an award of damages or other sanctions, in a proceeding by a member or director or by or in the right of the corporation, because a director of the corporation, or any person with whom or which he has a personal, economic or other association, has an interest in the transaction] the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a member or director or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be [enjoined, set aside] the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a member or director or by or in the right of the corporation, [because the director, or any person with whom or which he has a personal, economic or other association,] on the ground that the director has an interest [in] respecting the transaction, if: (1) Directors' action respecting the transaction was [at any time] taken in compliance with section 33-1129, as amended by this act, at any time;

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(2) members' action respecting the transaction was [at any time] taken in compliance with section 33-1130, as amended by this act, at any time; or (3) the transaction, judged according to the circumstances at the relevant time, [of commitment,] is established to have been fair to the corporation.

Sec. 24. Section 33-1129 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (1) of subsection (b) of section 33-1128, as amended by this act, if the transaction [received] has been authorized by the affirmative vote of a majority, but no fewer than two, of [those qualified directors on the board of directors or on a duly empowered committee of the board] the qualified directors who voted on the transaction, after [either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (b) of this section; provided that action by a committee is so effective only if (1) all committee members are qualified directors, and (2) committee members are either all the qualified directors on the board or are] required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b) of this section, provided that where the action has been taken by a committee, all members of the committee were qualified directors, and either (1) the committee was composed of all the qualified directors on the board of directors, or (2) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

[(b) If a director has a conflicting interest respecting a transaction, but neither he nor a related person of the director specified in subparagraph (A) of subdivision (3) of section 33-1127 is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting



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information relating to the transaction such that the director may not make the disclosure described in subparagraph (B) of subdivision (4) of section 33-1127, then disclosure is sufficient for purposes of subsection (a) of this section if the director (1) discloses to the directors voting on the transaction the existence and nature of his conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (2) plays no part, directly or indirectly, in their deliberations or vote.]

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subparagraph (E) or (F) of subdivision (5) of section 33-1127, as amended by this act, is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction: (1) All information required to be disclosed that is not so violative, (2) the existence and nature of the director's conflicting interest, and (3) the nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

[(d) For purposes of this section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (1) a conflicting interest respecting the transaction, or (2) a familial, financial, professional or employment relationship

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with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.]

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the certificate of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

Sec. 25. Section 33-1130 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(a) Members' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (2) of subsection (b) of section 33-1128, as amended by this act, if a majority of the votes cast by the members entitled to vote [were cast] are in favor of the transaction after (1) notice to members entitled to vote describing the [director's conflicting interest] action to be taken respecting the transaction, (2) provision to the corporation of the information referred to in subsection [(d)] (b) of this section, and (3) [required disclosure] communication to the members [who voted] entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information [was] is not known by them.

(b) A director who has a conflicting interest respecting the transaction shall, before the members' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of any members entitled to vote who, to the knowledge of such director, are (1) a director who has a conflicting interest respecting the transaction, or (2) a related person of any such director,

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excluding a person described in subparagraph (F) of subdivision (5) of section 33-1127, as amended by this act.

[(b)] (c) For purposes of this section, the members entitled to vote with respect to a director's conflicting interest transaction [means] are any members entitled to vote, except members entitled to vote who [, to the knowledge, before the vote, of] the secretary or other officer or agent of the corporation authorized to tabulate votes [, are (1) directors who have a conflicting interest respecting the transaction, or (2) controlled by directors who have] either knows, or under subsection (b) of this section is notified, are either (1) a director who has a conflicting interest respecting the transaction, or [by] (2) a related person of [any such director, or both] the director, excluding a person described in subparagraph (F) of subdivision (5) of section 33-1127, as amended by this act.

[(c)] (c) The members entitled to vote present in person, or by proxy if voting by proxy is permitted, or voting by ballot if voting by ballot is permitted, constitute a quorum for purposes of action that complies with this section, unless the certificate of incorporation or bylaws require a greater number. Subject to the provisions of subsections (d) and (e) of this section, members' action that otherwise complies with this section is not affected by the presence of members, or the vote of members, that are not members entitled to vote.

(d) For purposes of compliance with subsection (a) of this section, a director who has a conflicting interest respecting the transaction shall, before the members' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all members that the director knows are controlled by the director or by a related person of the director, or both.]

(d) A majority of the votes entitled to be cast by the members

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entitled to vote with respect to the transaction constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e) of this section, members' action that otherwise complies with this section is not affected by the presence, or by the voting, of members that are not entitled to vote with respect to the transaction.

(e) If a members' vote does not comply with subsection (a) of this section solely because of a director's failure [of a director] to comply with subsection [(d)] (b) of this section, and if the director establishes that [his] the failure [did not determine and] was not intended [by him] to influence and did not in fact determine the outcome of the vote, the court may [, with or without further proceedings respecting subdivision (3) of subsection (b) of section 33-1128,] take such action respecting the transaction and the director, and may give such effect, if any, to the members' vote, as [it] the court considers appropriate in the circumstances.

(f) Where members' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the certificate of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the members, in which action members that are not entitled to vote on the transaction may participate.

Sec. 26. (NEW) (*Effective October 1, 2006*) (a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and: (1) Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 33-1129 of the general statutes, as

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amended by this act, as if the decision being made concerned a director's conflicting interest transaction; or (2) members' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 33-1130 of the general statutes, as amended by this act, as if the decision being made concerned a director's conflicting interest transaction; except that, rather than making required disclosure, as defined in section 33-1127 of the general statutes, as amended by this act, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

Sec. 27. Subsection (b) of section 33-636 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(b) The certificate of incorporation may set forth: (1) The names and addresses of the individuals who are to serve as the initial directors; (2) provisions not inconsistent with law regarding: (A) The purpose or purposes for which the corporation is organized; (B) managing the business and regulating the affairs of the corporation; (C) defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; (D) a par value for authorized shares or classes of shares; (E) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and

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upon specified conditions; (3) any provision that under sections 33-600 to 33-998, inclusive, is required or permitted to be set forth in the bylaws; (4) a provision limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of duty as a director to an amount that is not less than the compensation received by the director for serving the corporation during the year of the violation if such breach did not (A) involve a knowing and culpable violation of law by the director, (B) enable the director or an associate, as defined in section 33-840, to receive an improper personal economic gain, (C) show a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, (D) constitute a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation, or (E) create liability under section 33-757, provided no such provision shall limit or preclude the liability of a director for any act or omission occurring prior to the effective date of such provision; and (5) a provision permitting or making obligatory indemnification of a director for liability, as defined in [subdivision (5) of] section 33-770, as amended by this act, to any person for any action taken, or any failure to take any action, as a director, except liability that (A) involved a knowing and culpable violation of law by the director, (B) enabled the director or an associate, as defined in section 33-840, to receive an improper personal gain, (C) showed a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, (D) constituted a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation or (E) created liability under section 33-757, provided no such provision shall affect the indemnification of or advance of expenses to a director for any liability stemming from acts or

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omissions occurring prior to the effective date of such provision.

Sec. 28. Subsection (b) of section 33-1026 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(b) The certificate of incorporation may set forth: (1) The names and addresses of the individuals who are to serve as the initial directors; (2) provisions not inconsistent with law regarding: (A) Managing and regulating the affairs of the corporation; or (B) defining, limiting and regulating the powers of the corporation, its board of directors and members or any class of members; (3) any provision that under sections 33-1000 to 33-1290, inclusive, is required or permitted to be set forth in the bylaws; (4) a provision limiting the personal liability of a director to the corporation or its members for monetary damages for breach of duty as a director to an amount that is not less than the compensation received by the director for serving the corporation during the year of the violation if such breach did not (A) involve a knowing and culpable violation of law by the director, (B) enable the director or an associate, as defined in section 33-840, to receive an improper personal economic gain, (C) show a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, or (D) constitute a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation, provided no such provision shall limit or preclude the liability of a director for any act or omission occurring prior to the effective date of such provision; and (5) a provision permitting or making obligatory indemnification of a director for liability, as defined in [subdivision (5) of] section 33-1116, as amended by this act, to any person for any action taken, or any failure to take any action, as a director, except liability that (A) involved a knowing and culpable

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violation of law by the director, (B) enabled the director or an associate, as defined in section 33-840, to receive an improper personal gain, (C) showed a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, or (D) constituted a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation, provided no such provision shall affect the indemnification of or advance of expenses to a director for any liability stemming from acts or omissions occurring prior to the effective date of such provision.

Approved May 19, 2006